

ORIGINAL

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THE UNITED STATES DISTRICT COURT  
Middle District of Pennsylvania  
Harrisburg, PA

Yan SHAO

plaintiff,

v.

Edward Cuccia

Charles Day

John / Jane Doe

Law Offices of Ferro & Cuccia

Defendants.

) No. 1:00 CV 1901  
(JUDGE Rambo)

*mag & fmger*

FILED  
HARRISBURG, PA

APR 21 2003

MARY E. O'ANDREA, CLERK  
Per \_\_\_\_\_  
Deputy Clerk

CIVIL ACTION - LAW

PLAINTIFF'S RESPONSE TO MS PAMELA DAY'S APRIL 10 2003 MOTION  
FOR CLARIFICATION OF THE COURT'S MARCH 17 2003 ORDER  
CONCERNING THE UNTIMELINESS OF MS. DAY OBJECTIONS

#### INTRODUCTION

Applying LR 7.31 (governing certain post trial matters) Ms. Pamela Day argues the plaintiff supplemented her January 28 2003 motions on February 10, 2003, thus extending the time in which Ms Day could respond to the January 28 2003 motions of the plaintiff. This argument is not persuasive. The plaintiff filed briefs in support of her motions on Jan 28 03, the same day the motions were filed and personally served on Ms. Day. Because Ms. Day did not file any response until February 20, her present arguments are moot. Ms. Day missed the deadlines for objections under both LR 7.3 and 7.6.

#### PROCEDURAL HISTORY OF THE CASE

(SOME ITEMS HAVE BEEN OMITTED AS NOT DIRECTLY RELEVANT TO THE PRESENT MOTION)

1. On January 28, 2003, this Court conducted a hearing wherein Mr. Charles Day and Ms. Pamela Day should show cause why they should not be held in contempt. Both Mr. Charles Day and Ms. Pamela Day testified at this hearing.
2. On January 28 2003, the plaintiff personally served three motions and briefs in support upon both the defendant and Ms. Pamela Day.
3. On February 10 2003, the plaintiff submitted a Brief to the Court responding to testimony offered at the January 28 2003 hearing.
4. On February 20, 2003 Ms. Pamela Day filed with the court a cross motion and a brief objecting to the plaintiff's January 28 2003 motions.  
(Please see note 1 of the Court's March 17 2003 Order.)
5. On March 17 2003, this Court ruled (pages 3-4) that Ms. Day's February 20 response was untimely, as not in conformity with LR Rule 7.6
6. By way of her present motion for clarification, Ms. Day objects to the Court's March 17 2003 finding that her February 20 2003 response was not timely filed.

#### STATEMENT OF FACTS

1. The Plaintiff's February 10 2003 submission was not an "amended motion" as Ms. Day has mistakenly characterized it in her motion for clarification (unnumbered page 1)

2. Under either LR 7.6 or LR 7.31 Ms. Day missed the deadline(s) for submitting a brief in opposition to the Plaintiff's January 28 2003 motions.

## STATEMENT OF QUESTION INVOLVED

Whether this Court has erred in finding untimely Ms. Day's February 20 2003 responsive pleading.

## ARGUMENT

The Plaintiff's February 10 2003 Submission is not an "amended motion;" therefore, its filing did not extend a party's obligation to respond in a timely manner to motions filed and served on January 28 2003.

With her three January 28 2003 motions, the plaintiff filed and served briefs in support. By overlooking this fact, Ms. Pamela Day suggests the plaintiff's February 10 2002 submission is an "amended motion" (Ms. Day's motion at unnumbered page 1). She then argues she is somehow relieved of the obligation under the local rules to file a timely objection to the Jan 28 motions. This is a specious argument. Were the plaintiff to have filed an "amended motion" Feb 10 03, the plaintiff would have been required to submit with it a Proposed Order permitting the amendment (LR 7.1). The Feb 10 03 filing does not in any way extend the deadline by which any oppositions to the January 28 03 motions must be filed. Ms. Day has offered no jurisprudence in support of her arguments.

LR 7.6 controls deadlines by which responses to motions must be filed. LR 7.31 only regulates the filing deadline of post-trial briefs.

Ms. Pamela Day has not offered any authority why LR 7.6 does not apply to proceedings having to do with the enforcement of the judgements of this court. LR 7.31 governs post-trial briefs; it makes no reference to the new proceeding presently before this Court, that is, a proceeding to enforce the judgement of the

Court. Ms. Day missed the deadline to object (15 days under LR 7.6, 20 days under LR 7.31). Her response to the personally served January 28 2003 motions and briefs did not reach the court until February 20.

## CONCLUSION

The Court did not err in finding Ms. Pamela Day's objections untimely. Her motion should be denied.

The present proceedings have to do with the failure of the defendant, Mr. Charles Day, to pay court-ordered assessments and judgements. Typically, Mr. Day has himself filed nothing but has facilitated the present motion of his wife, Ms. Pamela Day (appended exhibit 1). The plaintiff is required to answer her submissions and this Court is required to pay attention to the verbiage expended by counsel to prop up their syllogisms.

The plaintiff regrets the defendant and judgement debtor and his wife do not devote their energies to conforming Mr. Day's conduct to the Court's many previous orders to him - rather than suggesting this Court's decisions are procedurally infirm.

Respectfully submitted,

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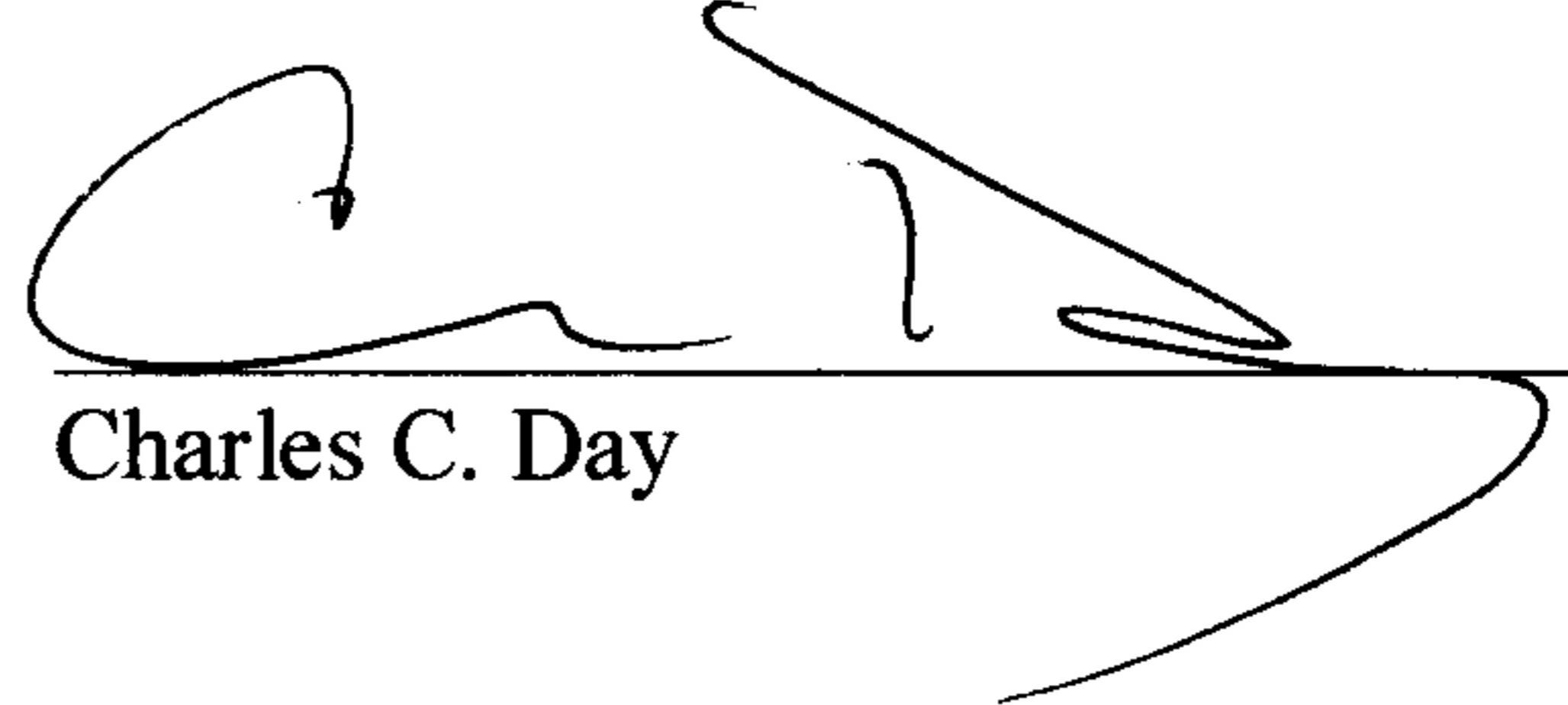
Richard B. Cook  
Licensed in Maryland  
Counsel for the Plaintiff  
17 Jonathan's Court  
PO Box 411  
Hunt Valley, MD  
410 683 9469

## CERTIFICATE OF SERVICE

Undersigned counsel certifies that on April 10, 2003, a copy or the appended Motion for Clarification has been served on the plaintiff by First Class Mail, postage pre-paid, to the following addresses:

Richard B. Cook  
P.O. Box 411  
Hunt Valley, MD 21030

Craig T. Trebelcock  
100 East Market  
P.O. Box 15012  
York, PA 17405-7012



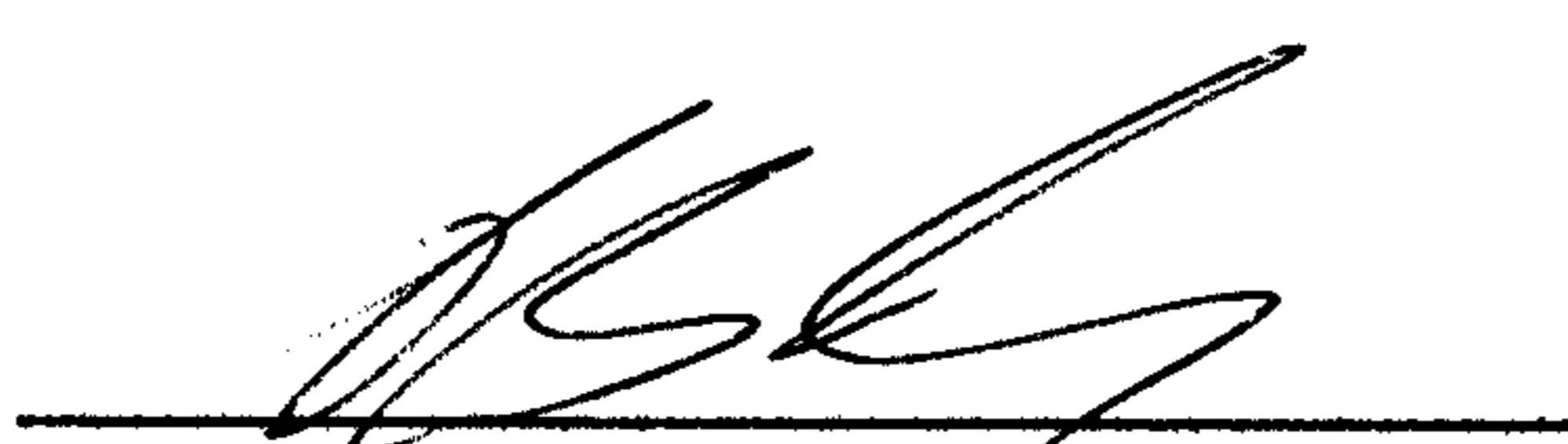
Charles C. Day

## CERTIFICATE OF SERVICE

Undersigned counsel certifies that on April 17, 2003, a copy of the appended response has been served on the defendant by First Class Mail, postage pre-paid, to the following address, and separately upon Pamela Day, postage pre-paid, to the following address:

Charles Day, Esq.  
80-100 Tryon Place  
Jamaica, NY 11432

Pamela Day, Esq  
80-100 Tryon Place  
Jamaica, NY 11432



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Richard B. Cook